Templates in the EU Inc. Regulation Proposal

Law Working Paper N° 925/2026
May 2026

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Abstract

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Keywords: 28th Regime, Entrepreneurship, EU Company Law, EU Inc., Innovation, Private Ordering, Startups, Venture Capital

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Abstract

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Building on prior work on venture capital contracting under mandatory corporate law, we identify four shortcomings. First, the architecture is incomplete: the Proposal omits a model shareholder agreement, even though effective VC contracting depends on the interaction between articles of association and shareholder arrangements. Second, the drafting process is overly generalist and unlikely to yield genuinely VC-specific templates. Third, the Proposal's fairness-oriented logic risks producing terms that clash with the asymmetric, state-contingent structures typical of VC deals. Fourth, the legal protection offered by the template is limited, focusing on formation-stage effects while leaving subsequent judicial intervention unconstrained.

We propose four adjustments: introduce a model shareholders' agreement; create a dedicated VC drafting track; abandon fairness as the organising principle for VC templates; and provide a robust safe harbour covering both ex ante design and ex post enforcement.

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A. Introduction

Europe's concern that legal fragmentation constrains the scaling of innovation-driving firms has moved from diagnosis to institutional design. On 18 March 2026, the EU Commission unveiled a Proposal for a Regulation establishing a 28th corporate law regime (the "Proposal").[1] The Proposal would introduce a new EU-wide optional corporate form – informally known as "EU Inc." – targeted on reducing fragmentation, lowering administrative burdens, and facilitating firm creation and cross-border scaling.[2] One essential device for achieving these objectives is a statutory template for the articles of association, to be produced by the EU Commission through future implementing acts.

Developing one of the criticisms we briefly articulated elsewhere,[3] this article argues that, while those model articles of association may yield usability gains and reduce drafting costs for the broader population of unlisted firms, the Proposal does not offer a well-designed solution for the very subset of firms whose financing needs originally gave the initiative much of its urgency: VC-backed firms.Given Peter Mülbert's longstanding scholarly engagement with European financial market integration, we are hopeful that the arguments advanced in this piece will be of particular interest to him.

Prior work has shown that the contractual technology for VC deals deployed in the US creates a coordinated and internally coherent set of arrangements distributed across the articles of association and multiple shareholder agreements.[4] The intertwined instruments produce a markedly uneven allocation of cash-flow and control rights that, at specific points in the business relationship, can result in VC investors taking full control of the firm and capturing most, if not all, of its value.[5] That contractual technology, whose drafting has benefited from the assistance of the constant input of market-facing bodies such as the *National Venture Capital Association* ("NVCA"), is generally seen as presumptively efficient.[6] The legal environment in some EU jurisdictions—namely, Germany and Italy—is averse to the transplant of that contractual technology: largely

[1] European Commission, Proposal for a Regulation of the European Parliament and of the Council on a 28th regime corporate legal framework (EU Inc.), 18 March 2026, COM(2026) 321 final.

[2] See Proposal (n 1), Recitals 1–3 (stating the European Commission's objectives); European Commission Communication, Towards a 28th regime for EU companies, 18 March 2026, COM(2026) 320 final.

[3] L. Enriques, C.A. Nigro, T.H. Tröger, *Why the 28th Regime Proposal Falls Short of Europe's Challenge*, Oxford Business Law Blog, 19 March 2026, available at https://blogs.law.ox.ac.uk/oblb/blog-post/2026/03/why-28th-regime-proposal-falls-short-europes-challenge.

[4] See L. Enriques, C.A. Nigro, T.H. Tröger, Venture Capital Contracting as Bargaining in the Shadow of Corporate Law Constraints, ECGI Law Working Paper No. 833/2025 (2025), available at https://ssrn.com/abstract=5183235; Id., Can U.S. Venture Capital Contracts Be Transplanted into Europe? Systematic Evidence from Germany and Italy, ECGI Law Working Paper No. 848/2025 (2025), available at https://ssrn.com/abstract=5287685; L. Enriques, C.A. Nigro, T.H. Tröger, Mandatory Corporate Law as an Obstacle to Venture Capital Contracting in Europe: Implications for Markets and Policymaking, ECGI Law Working Paper No. 834/2025 (2025), available at https://ssrn.com/abstract=5183256; L. Enriques, C.A. Nigro, No Private Ordering Please, We're Italian, available at https://ssrn.com/abstract=5183266.

[5] See L. Enriques, C.A. Nigro, T.H. Tröger, Venture Capital (n 4).

[6] Id., at 25-27.

building on the input of scholars, legal gatekeepers and adjudicators take an interventionist approach that makes the optimal components of VC contracts (and their functional equivalents) practically unavailable and distorts the economic logic that should govern their implementation.[7]

Against this background, model documents are useful for VC-backed firms only if they are structured in a way that, through a combination of model articles of association and shareholder agreements, can carry the specialised and asymmetric contractual technology these firms need, and benefit from the legal protection required to allow that technology to function as intended in a hostile institutional environment.[8]

Our prior work unveils a specific type of friction: one in which mandatory corporate law in action, through legal gatekeepers and adjudicators and their expansive interpretation of restrictive corporate law rules and standards, obstructs the adoption and implementation of the contractual technology on which VC financing depends. These frictions negatively affect structuring choices and the price of available funding. EU policymakers who want to create innovation-spurring and thus welfare-enhancing integrated capital markets, therefore, must provide incorporation options for VC investors and founders that enable parties to rely on efficient, specific contractual technologies across the Union.

With a view to this policy objective, four problems emerge in the Proposal's approach to model documents. The first is a scope issue: the proposal for EU Inc. templates does not extend to shareholder agreements, despite their importance in VC deals. The second is a process shortcoming with serious political economy implications: a generalist drafting process is unlikely to yield a specific contractual technology. The third arises from the centrality of fairness in the EU Inc. Proposal, which is hard to square with the asymmetric logic of VC deals. The fourth issue relates to the fact that the safe-harbour effect of the template, at least on its face, is limited to the formation stage and does not rule out also later judicial challenges to the validity and the fairness of rights allocation and their exercise under the template.

We advocate four correctives: the addition of a model shareholder agreement to the regime's scope; a dedicated drafting track for VC-specific templates; a design mandate not organised around fairness; and a thorough safe harbour operating not only at the formation stage but also throughout the life of the company.

The discussion proceeds as follows. Section B reconstructs the policy trajectory that led to the Proposal and the role assigned to model documents within it. Section C summarises the relevant dimensions of our prior work: it explains the contractual needs of VC-backed firms, flags the obstacles that mandatory corporate law creates to the proper functioning of VC contracting in jurisdictions such as Germany and Italy, and reports some solutions

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[7] L. Enriques, C.A. Nigro, T.H. Tröger, Can U.S. (n 4).

[8] *Cf.* L. Enriques, C.A. Nigro, T.H. Tröger, Mandatory (n 4).

that we advocated to make national company laws a better fit for the contractual technology developed in the US practice for VC deals. Section D identifies the four potential limitations of the Proposal's approach to model documents. Section E sets out four corresponding suggestions to improve the Proposal as regards templates. Section F concludes.

B. The Proposal and Its Model Documents

The proposition of a 28th corporate law regime emerged through a sequence of political developments. The reports on European competitiveness by Enrico Letta and Mario Draghi identified legal fragmentation as a barrier to scaling innovation-driving firms within the EU and called for an optional EU-wide corporate law framework.[9] The EU Inc. market campaign then translated that diagnosis into a more concrete institutional ambition by advocating a pan-EU corporate form modeled on the Delaware corporation.[10] The European Commission's Start-up and Scale-up Strategy of May 2025 placed the project on the EU's policy agenda.[11]

Until then, the model documents had not yet appeared in the policy discussion. They featured prominently in the European Parliament's Committee on Legal Affairs Draft Report by René Repasi of 30 June 2025 (the "Draft Report").[12] The Draft Report extended the regime's possible reach beyond innovation-driving firms in the narrow sense and, as the three of us had suggested,[13] called for both model articles of association and a model shareholder agreement.[14] The drafting architecture would embrace the specific expertise of critical stakeholders: one expert group for the articles of association, including founders, VC investors, and trade unions; another one for the shareholder agreement, including founders and VC investors. The model shareholder agreement was also explicitly described as an instrument that should be "fair" and "strike a balance" between founders' and investors' interests.[15]

[9] E. Letta, Much More than a Market — Speed, Security, Solidarity: Empowering the Single Market to deliver a sustainable future and prosperity for all EU Citizens (European Council, April 2024), available at https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf; M. Draghi, The Future of European Competitiveness (European Commission, September 2024), available at https://commission.europa.eu/topics/competitiveness/draghi-report_en.

[10] See the EU Inc. campaign at <eu-inc.org>, a pan-European founder- and investor-led advocacy effort calling for a single, pan-EU corporate form modelled on the Delaware corporation.

[11] Commission Communication, The EU Startup and Scaleup Strategy — Choose Europe to Start and Scale, COM(2025) 270 final, 28 May 2025.

[12] Draft Report of the Committee on Legal Affairs with recommendations to the Commission on a 28th EU company law regime (Rapporteur: René Repasi), 30 June 2025, 2025/2079(INL), available at https://www.europarl.europa.eu/doceo/document/JURI-PR-773199_EN.pdf.

[13] L. Enriques, C.A. Nigro, T.H. Tröger, Mandatory (n 4).

[14] Draft Report (n 12).

[15] Id.

The EU Parliament's Resolution of 20 January 2026 (the "Resolution") broadly endorsed that approach.[16] It confirmed the initiative's broader scope and retained the two-template structure, with the shareholder agreement remaining tied to the idea of balancing the interests of founders and investors.[17] It also left the two-expert-group architecture in place.[18]

The Proposal translated that policy trajectory into a concrete institutional design but was less ambitious. First, it narrowed the scope of the templates to the model articles of association.[19] Because matters not governed by the Regulation *or the articles of association* shall be governed by the national law applicable to the designated national legal form,[20] shareholder agreements will fall within the scope of Member States' corporate laws.

Second, under the Proposal, the drafting of the model articles of association is entrusted to the Commission and implemented through delegated rulemaking.[21] The two-expert-group architecture was not explicitly retained.

The focus on fairness has not disappeared from the Proposal, although its locus has shifted. Where the Draft Report had anchored fairness in the model shareholder agreement itself, the Proposal inscribes it in the corporate law design within which the model articles will be drafted. Two specific features of the Regulation matter here. First, the Regulation entrenches a set of mandatory minority protections inspired by the need to "strike a balance" between the influence of majority shareholders, the autonomy granted by the articles of association, and minority shareholder protection.[22] Second, it allows differentiated cash-flow or control rights through the creation of separate share classes[23] but not via special rights granted to individual shareholders as such. Because the model articles must operate within this broader governance architecture, a similar fairness posture will likely shape their content reflexively.

Moreover, the adoption of the model articles is linked to specific procedural consequences. Parties using them benefit from deemed compliance with national requirements on form and certification as well as from a fast-track incorporation

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[16] European Parliament Resolution of 20 January 2026 with recommendations to the Commission on a 28th EU company law regime, 2025/2079(INL), available at https://www.europarl.europa.eu/doceo/document/TA-10-2026-0002_EN.pdf.

[17] Id.

[18] Id.

[19] Proposal (n 1), Art 7-8 (speaking only of articles of association and mentioning "EU templates for the standard articles of association").

[20] Id., Art 4(2).

[21] Id., Artt 8(3); 35(3)(a).

[22] *Cf.* Id., Recital 37 (with specific reference to the oppression remedy). See also Id., Art 56(6-7) (granting minority shareholders the right to seek the appointment of an independent expert to investigate suspected wrongdoing).

[23] Id., Recital 40; see also Art 47 and Recital 38.

procedure.[24] At the same time, preventive control at the formation stage is preserved.[25] Whether the adoption of the model articles also shields their substantive content from review by registrars or, as the case may be, notaries remains unresolved by the Proposal's text. On a narrow reading, the safe harbour is procedural only; on a wider one, it extends to the content of the adopted clauses. In either case, the legal effects of the model articles concern the formation stage alone.[26]

C. What VC-Backed Firms Need, What They Cannot Get, and How to Solve the Problem

Although the Proposal's scope has broadened to encompass the wider population of unlisted firms, the initiative was, from the outset, politically motivated by the needs of the innovation-driving VC-backed firms whose financing difficulties prominent politicians, market participants, and policymakers had loudly invoked in calling for a new corporate law regime.[27]

Our prior work investigates the challenges that VC investors and founders face when bargaining in the shadow of the largely mandatory corporate law regimes, maps the legal obstacles they must overcome when seeking to shape agency cost-minimising governance structures in Germany and Italy, and identifies a set of model articles of association and shareholder agreement as one potential solution to those challenges.[28] This Section takes stock of our previous findings to provide the conceptual coordinates needed to assess the Proposal and its approach to model documents.

I. Entrepreneurial Finance, Market Frictions, VC Contracting, and Corporate Law

Innovation-driving startups operate amid severe uncertainty, information asymmetries, and moral hazard. The market for entrepreneurial finance is thus marked by especially deep frictions.

Economists have long expected contracts to play a central role, allocating cash-flow and control rights in ways designed to optimise incentives and mitigate frictions. VC contracting is the most developed manifestation of that logic.

Adding to the law and finance literature that had already suggested that private ordering is central to the development of a VC market and that corporate law matters chiefly

[24] Id., Art 8.

[25] Id., Art 14 and Recital 20. In particular, the "preventive administrative, judicial or notarial control, or any combination thereof … shall verify that[, inter alia,] …where the EU templates referred to in Article 8 are used, … they are used correctly." Id., Art 14(1) and (2).

[26] Nothing in the Proposal or its accompanying materials suggests that national courts would be barred from holding individual clauses in the model articles of association unlawful merely because they replicate *verbatim* the text of the model articles. See below text following n 47.

[27] See above text accompanying nn 9-11.

[28] L. Enriques, C.A. Nigro, T.H. Tröger, Mandatory (n 4).

because it determines how far parties can (re)allocate cash-flow and control rights as they see fit, we have shown that VC contracting is a specific and internally coherent technology, marked by deliberate asymmetry both ex ante and ex post: ex ante, in the separation and state-contingent allocation of cash-flow and control rights; ex post, in the potentially sharp and highly unequal distribution of firm value that the contract allows VC investors to receive when downside risk materialises.

Corporate law in action ought to be sufficiently flexible to let parties build, preserve, and enforce the relevant arrangements. More precisely, corporate law is ideally shaped for VC contracting if it exhibits three main features. First, it should take a restrained view of mandatory law, so that the private ordering solutions parties negotiate are not thwarted by expansive prohibitions, possibly built upon anti-evasion doctrines. Second, it should exercise restraint in ex post gap-filling, so that rights negotiated in line with the deal's economic logic are not later softened through general clauses or implied limitations. Third, it should be able to discipline genuinely abusive exercises of rights, but by reference rather to the economic rationale of the relevant bargain than by recourse to an external fairness baseline.

Delaware corporate law in action approximates that benchmark, which is one of the main reasons the US VC contractual template evolved under its aegis. VCs and founders bargaining in the shadow of Delaware corporate law developed a highly specific contractual technology. Cash-flow and control rights are separated; investors often enjoy state-contingent control rights disproportionate to their equity stake. Incentives are structured through carrot-and-stick arrangements that are often designed to be self-enforcing. Ultimately, VC deals reward success as generously as they sharply penalise failure. In the event of a forced sale, a down-round, a liquidation, and more generally "small tag" exit transactions, which contribute significantly to the relative success of VC investments, these features in fact produce markedly asymmetric allocations of value between VC investors and founders. The technology is embedded neither in isolated clauses nor in a single instrument. It is typically distributed across multiple functionally intertwined arrangements, located in both the articles of association and shareholder agreements. Their allocation between the two instruments reflects considerations (including confidentiality) that maximise the value parties derive from the contractual design. The sustained and high-quality input of a market-facing body composed of corporate law experts, VC investors, and entrepreneurs, such as the NVCA, has played a critical role in stabilising that contractual technology through a set of model documents that is continuously revised and updated to reflect market and legal developments.[29]

In sum, US VC contracts are, for a variety of reasons, a presumptively efficient solution to the problems bedeviling the financing of high-tech startups.

[29] See NVCA, Model Legal Documents, available at https://nvca.org/model-legal-documents/.

II. Rigid Corporate Law as an Obstacle

Rigid corporate law can prevent VC investors and founders from achieving an allocation of cash-flow and control rights as efficient as the one resulting from US VC contracts through two conceptually distinct channels: prohibitions and uncertainty. Prohibitions can be either absolute, ruling out both the relevant US-style clause and any meaningful functional equivalent, or relative, leaving room for inferior alternative arrangements that are costlier and/or less effective than the optimal solutions. Uncertainty, by contrast, implies the risk that the allocation of cash-flow and control rights will be litigated and possibly revisited.

Prohibitions and uncertainty penetrate everyday transactional practice through two distinct routes. Ex ante, legal gatekeepers—counsel, notaries, registrars—may block, dilute, or refuse clauses regarded as inconsistent with prevailing interpretations of corporate law. Ex post, adjudicators—courts and arbitrators—may do the same at the stages of interpretation and enforcement. They may rely on normative standards enshrined in general legal doctrines that do not account for the economic logic of the transaction, leading adjudicators to systematically misjudge how fairly or in good faith contracting parties exercise their rights, allowing them too little discretion or, at the opposite, failing to police abuse effectively.

In such an environment, corporate law has an adverse impact on the value of private ordering ex ante and increases the cost of funding at the margin. Empirical evidence has repeatedly shown that VC investors and founders rely on a specific contractual technology and that VC supply is sensitive to the legal environment in which that technology must operate.[30]

III. The Functional Gap in Europe: Systematic Evidence from Germany and Italy

When that conceptual framework is applied to Europe, particularly to Germany and Italy, it becomes apparent that mandatory corporate law indeed generates a functional gap between the contractual technology available in these jurisdictions and the US benchmark.

For most early-stage firms operating in those jurisdictions, domestic corporate law is, in practice, the only legal product available. Foreign incorporation and dual-company structures are available in principle, but these solutions are generally too costly and cumbersome to serve as a routine workaround. What domestic law permits, therefore, matters.

[30] See J. Lerner, A. Schoar, Does Legal Enforcement Affect Financial Transactions? The Contractual Channel in Private Equity, vol. 120, 2005, Quarterly Journal of Economics, p 223; B. Bian, Y. Li, C.A. Nigro, Conflicting Fiduciary Duties and Fire Sales of VC-backed Start-ups, LawFin Working Paper No. 35 (2022), available at https://ssrn.com/abstract=4139724; O. Eldar, J. Grennan, Common Venture Capital Investors and Startup Growth, vol. 37, 2024, Review of Financial Studies, p 549.

The bigger picture is that the arrangements shaping VC deals in the US cannot be transplanted into German or Italian corporate law either verbatim or through arrangements that are genuinely functionally equivalent. Very few arrangements survive that exercise—German law permits waivers of the corporate-opportunity doctrine and tag-along provisions, and Italian law permits tag-along provisions—but all other arrangements comprised in US VC deals (and their functional equivalents) are unavailable under either regime. VC investors and founders must therefore content themselves with inferior alternative arrangements and, hence, with an inferior contractual technology.

It is not statutory law alone that produces this outcome. The peculiar legal process in these jurisdictions plays a significant role. Scholars elaborate and stabilise interpretations of corporate law that broaden the reach of mandatory rules, construct implicit limits, and ultimately narrow the room left for private ordering. Those constructions then shape the behaviour of the actors who mediate access to the law in practice. Legal gatekeepers will refuse to include clauses they regard as incompatible with prevailing interpretations of corporate law, and courts and arbitrators may later strike down, narrow, or recast those same arrangements through ex post review, or misjudge how VC investors and founders exercise the resulting rights.

IV. Policy Response

One of our companion papers suggested two responses to the problem and its root causes.[31] First, it proposed an explicit statutory provision insulating the arrangements that typically shape U.S. VC deals from restrictive interpretations unsupported by blackletter law. Second, it proposed a template for VC-backed firms, consisting of model articles of association and one or more model shareholder agreements aligned with sophisticated VC practice. That paper also made clear that parties should remain free to deviate from the protected model, albeit at the cost of losing its protection; that notaries should ideally have no vetting power over such deviations; and that courts should not be allowed to derive from general corporate law standards, or from other provisions of the model itself, implicit duties that could distort the arrangements' economic logic.

A separate contribution by one of us then developed that line of thinking at the EU level.[32] It suggested that the European Commission recognise private bodies as competent to publish templates for articles of association and shareholder agreements, and similar

[31] L. Enriques, C.A. Nigro, T.H. Tröger, Mandatory (n 4).

[32] L. Enriques, EU Corporate Law Reforms to Create an Integrated Market for Innovation, in Lorenzo Moretti & Katarzyna Kornosz-Koronowska (eds.), THE EU'S STRATEGIC AUTONOMY AND THE INNOVATION-FINANCE NEXUS, European University Institute, 2025, pp 145 ff., available at https://cadmus.eui.eu/bitstreams/d351b7f4-daa0-4b1b-abdc-f662b2ee1a42/download.

documents. Clauses drawn from those recognised templates would benefit from a presumption of legality, subject only to overriding fundamental-rights constraints.[33]

D. Four Concerns about the Proposal

Making the specific contractual technology used by VC investors and founders work as intended is key to the success of any policy initiative that truly aims at stimulating VC investment. Against this background, we raise four concerns about the Proposal's approach to model documents. The first concern is about the Proposal's choice to limit the use of templates to model articles of association, even though the relevant contractual technology depends on the coordinated use of both articles of association and a shareholder agreement. The second concern relates to the risk that, especially in light of the process through which templates will be designed, the model articles may not take VC-backed firm's specific needs into account. Third, it is doubtful whether the model articles' content will eventually reflect the ex ante and ex post asymmetric logic typical of VC deals. Fourth, the safe-harbour effects of using templates may prove weak and short-lived.

I. Scope

The Draft Report and the Resolution had envisaged an intertwined, co-drafted package of two instruments: model articles of association and model shareholder agreement.[34] The Proposal only covers model articles.[35]

This choice prevents the deliberate coordination between the two instruments that sophisticated VC contracting requires. In U.S. VC deals, the shareholder agreement does not operate in isolation. Functionally, it plays a crucial role in shaping the agency-cost-minimising governance structure and risk allocation typical of VC-backed firms. Its effectiveness depends on complementary clauses in the articles of association, which provide institutional backing for the bargain struck at the shareholder level. The two instruments are designed to work together, and model articles drafted in the absence of a model shareholder agreement cannot reproduce that coordination. At best, the exercise yields a free-standing set of articles detached from the shareholder-level arrangements they are meant to reinforce. The synergies between the two are foreclosed from the outset.

Having only model articles also implies that shareholder agreements, and any other shareholder-level arrangement, will be subject to the corporate law of the Member State of registration.[36] Shareholder agreements will therefore remain subject to the mandatory laws, as spelled out in accordance with national interpretive methods and applied by the

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[33] Id., at 150.

[34] See above text accompanying nn 14 and 16.

[35] See above text accompanying nn 19.

[36] See above text accompanying n 20.

local legal gatekeepers and adjudicators. For firms registering in Germany or Italy, the regulatory constraints we documented for shareholder agreements will thus apply.[37]

The multi-level patchwork of supranational model articles of association and national shareholder agreements is not what VC-backed firms need. Such firms require a reliable contractual architecture distributed across mutually coordinated and functionally interrelated articles of association and shareholder agreements. Model articles of association alone are inapt to carry the contractual architecture which hinges on a deliberate, functionally motivated distribution of private ordering solutions across VC-backed firms' foundational documents. By returning one instrument that implements a significant portion of the VC-bargain to the national corporate law environment of the chosen Member State of incorporation, the Proposal delivers a partial architecture, leaving the viability of that portion of the bargain to bottom-up jurisdictional selection rather than an EU-level solution.

II. Process

The second concern arises from the process for drafting the model articles of association. Under the Draft Report and the Resolution, an expert group composed of founders, VC investors, and trade unions would have produced the templates with direct input from those—founders and VC investors—most familiar with the design and operation of VC contracts.[38] In its place, the Proposal assigns the task to the Commission.[39] No formal structure ensures the participation of VC investors, entrepreneurs, or VC contracting experts in the drafting of the articles of association.[40]

Drafting thus now falls to the Commission, whose work can be expected to be shaped by a consultation process directed at a broad and heterogeneous population of potential users of the regime. The 28th regime's own consultation, conducted in 2025, received 1,470 responses, with 534 (or 36%) from companies, 96% of which were small and medium-sized enterprises.[41] Participants in the consultation were thus—and can be expected to be, once templates are themselves the subject of consultation—from the broad universe of unlisted firms, with their own heterogeneous preferences for the organizational features of the company: some will prize flexibility, others simplicity. The predictable output, then, is not necessarily a template that ignores VC-backed firms altogether, but one whose content is shaped by the need to accommodate a broader set of users and objectives than a bespoke VC instrument would. The resulting compromise solution is likely to place a stronger emphasis on standardised governance defaults, serving primarily the

[37] See above Section C.II.

[38] See above text accompanying n 14.

[39] See above text preceding n 21.

[40] See above text following n 21.

[41] See Proposal (n 1), Commission Staff Working Document, Impact Assessment Report accompanying the Proposal (n 1), SWD(2026) 321 final, Part 2/3, Annex 2 (Stakeholder Consultation Synopsis), p 6.

constituencies traditionally represented in EU company law legislation, instead of meeting the needs of VC-backed firms for a specific contractual technology.

A modular structure built around a standardised core, which is aired in the Proposal Impact Assessment as a possible solution,[42] would not dramatically improve matters. It may mitigate rigidity at the margin, but it would still fall short of the distinct drafting process required for a genuinely VC-specific template. VC contracting is not a menu of detachable clauses. It is a coordinated and evolving technology. Many of the relevant provisions work because they are calibrated to each other and to the wider governance structure. A modular core with pre-set options may capture some variation but is poorly suited to achieving the kind of tailored coordination that VC contracting requires.

A second dimension compounds the process problem. Drafting specialised model articles (and model shareholder agreements) for VC-backed firms is a technically demanding undertaking, as the leading real-world benchmark — the NVCA model legal documents in the United States — illustrates. The NVCA does not publish a single VC template; it publishes a suite of documents, with variants reflecting different deal structures, stages, and industry specificities, recognising that even in VC contracting, a single instrument is insufficient. That suite emerged over more than two decades of iterative work by a dedicated practitioner committee interacting with VC investors and corporate law experts and was refined through repeated use in real VC deals and regular updates as market practice evolved. Replicating an equivalent on a comparable footing through the implementing-act track raises two structural questions: whether the relevant expertise—which largely sits in a practitioner community—can be channelled into a Commission-led process, and whether the continuous updating that characterises the NVCA suite can be sustained through EU implementing-act procedures rather than through the iterative practitioner mechanism that produced the relevant templates in the U.S.

III. Contractual Logic

The third concern focuses on the template's content. The Draft Report and the Resolution advocated for the model documents to be "fair" to various constituents.[43] The Proposal similarly inscribes a fairness-oriented posture into the corporate law design within which the model articles will be drafted. Indications of such a posture are in the regimes governing minority protection devices,[44] and in the limitations on the contractual techniques for granting differentiated economic and voting rights.[45]

[42] Commission Staff Working Document, Impact Assessment Report accompanying the Proposal, SWD(2026) 321 final, Part 3/3, at 69; SWD(2026) 321 final, Part 2/3 (n 41), at 10.(suggesting a standardised core for the articles of association, complemented by pre-determined optional clauses).

[43] See above text accompanying nn 15 and 17.

[44] See above text accompanying n 22.

[45] See above text accompanying n 23.

The institutional machinery will likely translate the “fair” posture into the templates. The predictable output is a template that emphasises equality and minority protection. At the Member State level, adjudicators deciding disputes on the exercise of the rights stipulated in the template will read the model articles of association, and possibly the shareholder agreements drafted under local corporate law, against that fairness background, thereby underscoring the template’s fairness orientation also at the implementation level.

Yet VC contracting eschews such a traditional fairness and equality posture in both ex ante design and ex post enforcement, resting on a separation and state-contingent allocation of cash-flow and control rights that empowers the VC investor to rely on unilateral control in downside states and often leads to an asymmetric allocation of firm value.[46] A template that treats (abstract) fairness as its organising principle denies the economic logic underpinning VC-financing arrangements from the outset. It deviates from optimal VC contracting in another crucial respect, thereby denying VC-backed firms the contractual technology they need to finance innovation.

IV. Safe-Harbour Effects

The fourth concern is about the degree to which the template is shielded from interference by legal gatekeepers and adjudicators. Under the Proposal, parties adopting the model articles benefit from deemed compliance with national form and certification requirements and from a fast-track incorporation procedure.[47] Whether adoption also shields the substantive content of the adopted clauses from review by registrars and notaries is unresolved by the Regulation's text: on one reading, the safe harbour is procedural only; on another, it extends to content; in addition, there is no clue as to whether the safe harbour continues to apply and, as the case may be, with which effect, once the company is formed. One may argue that the model articles of association are a source of law subordinate to the Regulation and other EU (Level-1) corporate law rules. National adjudicators may therefore find a clause of a company’s articles of association to be against the law even if it reproduces the template’s wording. Finally, because there is no model shareholder agreement, that instrument receives no protection whatsoever.

VC contracting in mandatory corporate law-rich environments faces three challenges: ex ante content-based objections by legal gatekeepers who read clauses against the background of mandatory corporate law; ex post review by courts and arbitrators that narrows, recharacterises, or invalidates any such clauses; and judicial scrutiny of how VC investors exercise the rights those clauses generate, often calibrated against an external fairness baseline.[48] A template can provide three corresponding protections to support the use of the VC contractual technology in such an environment: a content-level safe harbour against ex ante objections, a presumption of validity at the ex post review stage, and

[46] See above Section C.I.

[47] See above text accompanying n 24.

[48] See above Sections C.I and C.II.

interpretive guidance constraining how general clauses may be applied to the exercise of the ensuing rights.[49]

The Proposal falls short of doing that. Instead of a content-level safe harbour, it offers a procedural one—and even that is uncertain. It is silent on the templates' effects once the company is formed. Instead of interpretive guidance, it leaves the standards toolkit untouched. VC-backed firms are therefore left to rely on model articles of association that are *perhaps* immune to objections before formation and are likely challengeable thereafter. And because VC clauses are designed to become consequential precisely in the states of the world where VC investors' and founders' interests diverge—down-rounds, forced sales, redemptions—the Proposal's safe-harbour effects are stronger when the bargain is least exposed to litigation and weaker, if not absent, when parties are most inclined to go to court.[50]

E. Four Suggestions

As currently conceived, the template the Proposal envisions raises four concerns that, together, cast doubt on its ability to support the innovation-driving firms the initiative was originally supposed to serve. This Section points to four suggestions on scope, process, content, and safe-harbour effects, that may improve EU policymakers' current approach to the matter.

I. Broader Coverage

The first suggestion addresses the scope issue. The Commission should restore the instrument that the Proposal has dropped: a model shareholder agreement.

The point is not formal symmetry between two documents but functional integration. The relevant contractual technology is distributed across instruments, mutually coordinated, and functionally interdependent.

A regime that omits one of the two instruments that comprise the specialised contracting for VC-backed firms is incomplete. Restoring a model shareholder agreement would deliver the co-drafted and functionally integrated package that VC-backed firms require, rather than leaving a significant portion of the bargain to the national corporate-law environment of the chosen Member State of incorporation.

II. A Dedicated Drafting Track

The second suggestion mitigates the political economy risks of the drafting process. The specialised technology that supports VC deals requires a distinct drafting track.

[49] See above Section C.II.

[50] See above Section C.I.

If the delegation to private bodies that one of us has suggested were considered politically unfeasible,[51] the templates intended for VC-backed firms should be drafted through a dedicated process, separate from the generalist one. A specialised body including VC practitioners, specialised transactional lawyers, founders, and comparative corporate law experts should support the Commission in the exercise of drafting and updating the templates.

If the Commission wishes to provide additional templates for other purposes or constituencies, those may be developed separately. Stakeholders from the broader population of unlisted firms, along with legal gatekeepers and adjudicators, could then have their needs addressed through separate drafting processes tailored to their purposes, e.g., for the incorporation of subsidiaries in a cross-border conglomerate.

What matters here is that the templates intended to support VC-backed firms be insulated from the compromises that inevitably arise when a single instrument is expected to serve heterogeneous users with heterogeneous preferences. Such a targeted incorporation of VC-specific expertise into a distinct drafting track would avoid futile conflicts during the drafting process and inefficient compromises designed to reconcile incompatible objectives.

III. No "Fair" Templates

The third suggestion addresses the risk of templates too focused on fairness and therefore inconsistent with the asymmetric logic of VC deals.

Resting on the aspiration of balancing founders' and investors' interests, a fairness-based template tends to rule out or soften a variety of arrangements that play a crucial role in efficiently allocating risk in the financing of high-tech projects. It may also give legitimacy to the idea that ex post uneven allocations of firm value are pathological as such. Asymmetry in design and/or outcomes is, under this view, a defect as such.

Drafting effective templates for VC-backed firms requires abandoning that misconception and, instead, accepting that sophisticated parties can agree to an asymmetric contractual structure if it best serves their interests ex ante.

The model documents developed by the US NVCA, with their rich commentary and supporting materials, offer a reference point.[52] To be clear, EU policymakers should not import the US model documents wholesale. Rather, such documents should be used as a benchmark for the kind of asymmetric, functionally integrated contractual technology that an effective VC-facing template must encode. They illustrate a broadly consented market standard, endorsing the asymmetric allocation of risk and firm value typical of VC-contracting.

[51] See note 32 above.
[52] For reference, see above n 29.

IV. A Comprehensive Safe Harbour

The fourth suggestion addresses the protection problem. The VC deal-specific templates should be supported by carefully crafted legal protections to prevent the use of the interpretive toolkit that has traditionally hindered VC-supporting private ordering.

These legal protections should aim to solve the three challenges VC investors and founders face: ex ante content-based objections by legal gatekeepers who read clauses against the background of mandatory corporate law; ex post review by courts and arbitrators that narrows, recharacterises, or invalidates such clauses; and judicial scrutiny of how VC investors exercise the rights those clauses generate, calibrated against an external fairness baseline.

They should therefore be crafted to achieve the following: First, ex ante, the adoption of the recognised model articles of association should preclude substantive content review at the formation stage. Second, ex post, clauses drawn from recognised model documents—both articles of association and shareholder agreements—should benefit from a strong presumption of validity. Third, codified explicit rules of interpretation—that is, second-order rules that govern how legal gatekeepers and adjudicators approach the model documents' clauses and the ensuing rights—should instruct adjudicators that they may not invoke implicit rules or standards to override the templates' allocations of cash-flow and control rights. In addition, adjudicators may not invoke those rules and standards to second-guess how contracting parties exercise the rights stemming from the model documents based on a notion of fairness external to the economic and financial logic of VC deals, limiting judicial intervention to policing ex post opportunism, that is instances in which parties renege on the transaction's agreed-upon economic objectives.

A real safe harbour must operate on both sides of the adjudicative timeline. A protection that merely accelerates incorporation but leaves the bargain fully exposed thereafter is too thin to matter for the firms that rely most heavily on the enforceability of specialised contracting. The aim is not to make the relevant clauses and the exercise of the rights they confer immune from all review, but to reduce the scope for them to be rewritten, softened, or displaced through the same forms of reasoning that have historically constrained VC contracting in the jurisdictions examined above.

F. Conclusion

The EU Inc. Proposal marks a potentially important moment in the development of European company law. It reflects recognition that, as we have argued, corporate law plays a role in facilitating or impeding the scaling of innovation-driving firms within the Single Market and thus is a factor in the development of a vibrant VC market.

As currently designed, however, the Proposal outlines a response that is poorly calibrated to the needs of those very VC-backed firms it aims to serve. The model articles of association are perhaps the most striking example of that miscalibration. Measured against the contractual technology on which VC financing depends, the Proposal approach to model documents raises four concerns. First, its scope is too narrow: it extends only to model articles of association, whereas the contractual technology that VC-backed firms need operates through both articles and shareholder agreements. Second, the drafting process risks producing a compromise too generalist to carry forward that specialised technology consistently. Third, the substantive logic of the model articles may be anchored in a notion of fairness that clashes with the asymmetric logic of VC deals. Fourth, the safe-harbour effects of the templates regime are too weak: at best, it neutralises issues that VC investors and founders face at the formation stage, but does not insulate the contractual technology embedded in the model articles from later second-guessing by adjudicators.

We proposed four correctives: a model shareholder agreement, a dedicated drafting track, a design mandate free of any fairness orientation, and a real safe harbour operating both ex ante and ex post.

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